



NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

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RIN 2700-AE47

Procedures for Disclosure of Records under the Freedom of Information Act (FOIA)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is finalizing its Freedom of Information Act (FOIA) regulations, in accordance with the FOIA Improvement Act of 2016.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule for its FOIA regulations in the Federal Register at 84 FR 14628, April 11, 2019, to implement the following requirements of the 2016 FOIA Improvement Act of 2016 (Act) that will be beneficial to requesters:

- Notify requesters for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services.
- Make records that have been both released previously and requested three or more times available to the public in electronic format.
- Establish a minimum of ninety days for requesters to appeal an adverse determination.

- Provide, or direct requesters to, dispute resolution services at various times throughout the FOIA process.

II. Expected Impact of the Final Rule

NASA actively works to make certain its FOIA system operates as efficiently as possible.

NASA's Web site provides explicit instructions for those who wish to submit a FOIA request and has an electronic library listing categories of documents or information specifically identified for inclusion under FOIA as well as documents or links to information for which NASA has received multiple FOIA requests.

NASA's FOIA requesters are a diverse community, including lawyers, industry professionals, reporters, and members of the public. Costs for these requesters can include the time required to research NASA's current FOIA rule and the time and preparation required to submit a request/appeal.

The Agency receives about 900 FOIA requests per year. Half of these requests are from commercial entities seeking information about NASA contracts awarded to winning contractors for services or technology used in a center mission related activity. Other requests are from members of the general public for items such as an image or video, a NASA study or mission activity, or records about an individual associated with NASA.

NASA believes these amendments will primarily impact the 450 requesters who are members of the general public. In addition to making it easier to research and review NASA's FOIA rule before submitting a request, the "housekeeping measures" should facilitate FOIA requests and production. Although NASA is unable to quantify these savings, the Agency does believe it is deregulatory in nature in that it provides relief to requesters.

III. Discussion and Analysis

NASA received two substantive comments from Cause of Action (CoA) and Reporters Committee for Freedom of the Press (RCFP). NASA also received a few non-substantive comments from members of the public. The following is a discussion of the substantive Comments from CoA and RCFP:

Comment 1: Commenter CoA suggested that NASA remove any reference to the outdated OMB fee guidelines from § 1206.504, because the OMB Guidelines conflict with current law and also contain an outdated definition of a “representative of the news media.”

Response: As a general matter, NASA notes conformity with the OMB Guidelines is required by the FOIA. *See* 5 U.S.C. 552(a)(4)(A)(i). However, as the commenter explained in his next comment, NASA has adopted the current statutory definition of a “representative of the news media” and has eliminated the outdated “organized and operated” standard referenced in OMB Guidelines from the regulation. For this reason, NASA declines to delete the reference to OMB because the regulation conforms to the statutory requirement.

Comment 2: Commenters CoA and RCFP both commented on the proposed rule’s definition of “representative of the news media.” Both commenters suggested that paragraphs (c)(3)(i)(A) through (C) in § 1206.507 and the final sentence in § 1206.507(c)(3)(ii) be rejected and eliminated from the final rule.

Response: NASA accepts these comments and has revised § 1206.507 to remove paragraphs (c)(3)(i)(A) through (C) and § 1206.507(c)(3)(ii) to remove the last sentence.

Comment 3: Both the CoA and RCFP commenters also took issue with NASA’s proposal to grant news media status “on a case-by-case basis based upon . . . intended use. CoA commenter explained that this review should be limited to those rare cases when NASA

either is determining the eligibility of a nascent news media requester or clarifying whether a request has been filed for a commercial use.” (84 FR at 14633, § 1206.507(c)(3)(i)(A)-(C).

Response: NASA accepts these comments and has removed the last sentence in § 1206.507(c)(3)(ii).

Comment 4: The commenter CoA made an additional fee category suggestion by stating that NASA should add additional details from a court decision with respect to the requirement that a news media requester use “editorial skills” to turn “raw materials” into a “distinct work,” by accepting “a simple press release commenting on records would satisfy this criterion.”

Response: NASA declines to add additional language to § 1206.507(c)(3)(ii) because this section tracks the language of the statute and Department of Justice FOIA regulation template.

Comment 5: The commenter CoA also suggested to better clarify the definition of “representative of the news media” to capture “alternative media” in § 1206.507(c)(3)(ii).

Response: Although NASA has done that in its example of news media and has included news organizations that disseminate *solely on the Internet*, NASA accepts these comments and has added language in § 1206.507(c)(3)(ii) to clarify the definition of “representatives of the news media” and to capture “alternative media.”

Comment 6: The commenter CoA also made a statement in reference to § 1206.307(a)(2) – “Records Under Agency Control.” The commenter explained that in describing the contents of an adverse determination letter—that is, the denial of a request—NASA proposes that it will “advise the requester in writing,” when applicable, if “[r]ecords do not exist, cannot

be located, or are not in the Agency’s *possession*[.]” The word “possession” misstates the law and should be replaced with the word “control.”

Response: NASA accepts this comment and has replaced the word “possession” with the word “control” in § 1206.307(a)(2).

Comment 7: Lastly, both CoA and RCFP commented to add the “foreseeable harm” standard to NASA’s FOIA regulations. Commenter CoA suggested additions to § 1206.307 – Denying a request. The CoA commenter suggested to add a sentence to § 1206.307(b)(2).

Response: NASA accepts this comment and has added “foreseeable harm” language at the beginning of § 1206.307 right below the section’s title.

IV. Regulatory Procedures

Executive Order 12866 - Regulatory Planning and Review and Executive Order 13563 --

Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This rule is not a significant regulatory action under EO 12866.

Executive Order 13771 – Reducing Regulations and Controlling Regulatory Costs

This rule is expected to be an EO 13771 deregulatory action. Details can be found in Section II -
- Expected Impact of the Rule.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

List of Subjects in 14 CFR Part 1206

Administrative practice and procedure, Freedom of Information Act, Privacy Act.

For reasons set forth in the preamble, NASA amends 14 CFR part 1206 as follows:

PART 1206— PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 51 U.S.C. 20113(a)

Subpart A – Basic Policy

2. Amend § 1206.100 by revising the section heading to read as follows:

§ 1206.100 Scope.

3. Amend § 1206.101 by adding paragraph (c) to read as follows:

§ 1206.101 General policy.

(c) The disclosure of exempt records, without authorization by the appropriate NASA official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of NASA to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

Subpart B – Types of Records to be Made Available

§ 1206.200 [Amended]

4. Amend §1206.200 by:

- a. Removing “and copying” and adding in its place “in an electronic format” in paragraph (b)(1) introductory text.
- b. Removing “Subpart C herein” and “which” and adding in their place “subpart C of this part” and “that”, respectively, and adding “or documents that have been requested 3 or more times” after “documents” in paragraph (b)(1)(iv).
- c. Removing “1997” and adding in its place “1996” and removing “paragraph (b)(1)(i) through (b)(1)(iv)” and adding in its place “paragraphs (b)(1)(i) through (iv)” in paragraph (b)(2)(i).
- d. Removing “1997” and adding in its place “1996” and removing “paragraphs (b)(1)(iv)” and adding in its place “paragraph (b)(1)(iv) of this section” in paragraph (c)(2).

§ 1206.201 [Amended]

5. Amend §1206.201 by adding “in an electronic format” after the word “copying” in the first sentence.

Subpart C - Procedures

6. Amend §1206.300 by revising paragraphs (a), (b), (d), and (e)(1) to read as follows:

§ 1206.300 How to make a request for Agency records.

(a) A requester submitting a request for records must include his/her name, and an e-mail or mailing address in order for the Agency to be able to send responsive records and/or to be able to contact the requester to obtain additional information or clarification of the request sought (see § 1206.301). The request must also address fees or provide justification for a fee waiver (see § 1206.302) as well as address the fee category in accordance with § 1206.507. The request should also include a telephone number in case the FOIA office needs to contact the requester regarding the request; however, this information is optional when submitting a request if an e-mail or mailing address is provided. A requester may also submit a request online via the NASA FOIA Web site, <https://www.nasa.gov/FOIA/Contacts.html>. Do not include a social security number on any correspondence with the FOIA office. If the FOIA unit determines processing fees will exceed the fee category entitlement, the unit will require a personal mailing address for billing purposes or for commercial use requesters, a business mailing address.

(b) NASA does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, Agency records are decentralized and maintained by various Centers and offices throughout the country. All NASA Centers have the capability to receive requests electronically, either through e-mail or a Web portal. To make a request for any of the NASA Center records, a requester should write directly to the FOIA office of the Center that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the Center that maintains the records requested. If a requester does not know which Center(s) may have the requested records, he/she may send his/her request(s) to the NASA's Headquarters (HQ) FOIA Public

Liaison, 300 E Street, S.W., Room 5L19, Washington, DC 20546, Fax number: (202) 358-4332, e-mail address: hq-foia@nasa.gov, and the HQ FOIA unit will forward the request to the Center(s) that it determines to be most likely to maintain the records that are sought.

(d) A member of the public may submit a FOIA request for an Agency record by mail, facsimile (FAX), electronic mail (e-mail), or by submitting a written request in person to the FOIA office having responsibility over the record requested or to the NASA Headquarters (HQ) FOIA Office. A requester may also submit a request online via the NASA FOIA Web site.

(e) ***

(1) For locations, mailing/e-mail addresses of NASA FOIA Centers, visit our Web site at <https://www.nasa.gov/FOIA/Contacts.html>.

7. Amend §1206.301 by revising paragraphs (c) and (d) to read as follows:

§ 1206.301 Describing records sought.

(c) If NASA, after receiving a request, determines that the request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the NASA's designated FOIA contact or the Principal Agency FOIA Officer, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the Agency's response to the request may be delayed or NASA may at its discretion close the request administratively.

(d) Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. mail or by electronic mail regardless of the method used by NASA to transmit the request for additional information. In order to be considered timely, responses to requests for additional information must be postmarked or received by electronic mail within twenty (20) working days of the postmark date or date of the electronic mail request for additional information or received by electronic mail by 11:59:59 p.m. ET on the 20th working day. If the requester does not respond to a request for additional information within the 20 working days, the request may be administratively closed at NASA's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

8. Amend §1206.302 by revising paragraph (c) to read as follows:

§ 1206.302 Fee agreements.

(c) If the FOIA office does not receive a written response within 20 working days after requesting the information, it will presume the requester is no longer interested in the records requested and will administratively close the request without further notification.

9. Amend §1206.305 by revising paragraph (a) to read as follows:

§ 1206.305 Responding to requests.

(a) Except in the instances described in paragraphs (e) and (f) of this section, the FOIA office that first receives a request for a record and maintains that record is the FOIA office responsible for responding to the request. The office shall acknowledge the request and assign it an

individualized tracking number if it will take longer than ten (10) working days to process. The NASA office responding to the request shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

10. Amend §1206.306 by revising paragraph (a) to read as follows:

§ 1206.306 Granting a request.

(a) Ordinarily, NASA shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. The FOIA office will not begin processing a request until all issues regarding scope and fees have been resolved. NASA will notify the requester of the availability of the FOIA Public Liaison to offer assistance in resolving these issues.

11. Amend §1206.307 by adding introductory text, revising paragraph (a)(2), adding the word “and” at the end of paragraph (b)(3), and revising paragraph (b)(4) to read as follows:

§ 1206.307 Denying a request.

NASA shall withhold records only when it reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law.

(a)***

(2) Records do not exist, cannot be located, are not in the Agency’s control, or the request does not reasonably describe the records sought; or

(b)***

(4) A statement that the denial may be appealed under subpart G of this part and a description of the requirements set forth therein. NASA shall also inform the requester of the availability of its

FOIA Public Liaison to offer assistance and include a statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services (OGIS). Should the requester elect to mediate any dispute related to the FOIA request with OGIS, NASA will participate in the mediation process in good faith.

Subpart D - Procedures and Time Limits for Responding to Requests

12. Amend § 1206.401 by revising paragraph (e) to read as follows:

§ 1206.401 Procedures and time limits for acknowledgement letters and initial determinations.

(e) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no responsive documents, shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requester of the right to appeal to the Administrator or the Inspector General, as appropriate, pursuant to subpart G of this part, and the right to seek dispute resolution services from the NASA FOIA Public Liaison or Office of Government Information Services.

13. Amend § 1206.403 by revising paragraph (c) to read as follows:

§ 1206.403 Time extensions.

(c) If initial processing time will exceed or is expected to exceed 30 working days, the FOIA office will notify the requester of the delay in processing and:

- (1) Provide the opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the Agency an alternative time frame for processing the request or a modified request;
- (2) Provide contact information for the NASA FOIA Public Liaison;
- (3) Offer the right of the requester to seek dispute resolution services from the OGIS;
- (4) Provide information regarding the intended determination; and
- (5) Shall make available its designated FOIA contact and its FOIA Public Liaison for the purpose of this paragraph (c).

Subpart E – Fees Associated With Processing Requests

14. Amend § 1206.502 by revising paragraphs (d) and (f) to read as follows:

§ 1206.502 Duplication.

(d) For copies of records produced on tapes, disks, or other electronic media, FOIA offices will charge the direct costs of producing the copy in the form or format requested, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under this subpart.

(f) For other forms of duplication, FOIA offices will charge the direct costs as well as any associated personnel costs. For standard-sized copies of documents such as letters, memoranda, statements, reports, contracts, etc., \$0.15 per copy of each page; charges for double-sided copies will be \$0.30. For copies of oversized documents, such as maps, charts, etc., fees will be

assessed as direct costs. Charges for copies (and scanning) include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the direct cost to NASA of reproducing, copying, or scanning the record. In circumstances where a request for a videotape or other outdated media is requested, and NASA does not have the capability to readily reproduce the record in the form or format requested and which requires the Agency to enlist the services of a private contractor to fulfill the request, the direct costs of any services by the private contractor will be charged to the requester. Specific charges will be provided upon request.

15. Revise § 1206.503 to read as follows:

§ 1206.503 Restrictions on charging fees.

(a) No search fees will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media, unless the records are sought for a commercial use.

(b) If NASA fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (a) of this section, may not charge duplication fees, except as described in paragraphs (b)(1) through (3) of this section.

(1) If a NASA component has determined that unusual circumstances as defined by the FOIA apply, and the component provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(2) If NASA has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Agency may charge search fees, or, in the case of requesters described in paragraph (a) of this section, may charge duplication fees, if the following steps are taken. The Agency must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, e-mail, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If the exception in this paragraph (b)(2) is satisfied, the Agency may charge all applicable fees incurred in the processing of the request.

(3) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(c) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(d) Except for requesters seeking records for a commercial use, NASA will provide without charge:

(1) The first 100 pages of duplication (or the cost equivalent for other media); and

(2) The first two hours of search.

(e) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under § 1206.504 is less than \$50.00 for any request, no fee will be charged.

16. Amend § 1206.504 by revising paragraphs (a) through (c) to read as follows:

§ 1206.504 Charging fees.

(a) NASA shall charge for processing requests under the FOIA in accordance with the provisions of this section and the OMB Guidelines. NASA will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, NASA may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. The submission of a FOIA request shall be considered a firm commitment by the requester to pay all applicable fees charged under this section, up to \$50.00, unless the requester seeks a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States. When a FOIA office determines or estimates the fees to be assessed in accordance with this section will amount to or exceed \$50.00, the FOIA office shall notify the requester unless the requester has indicated a willingness to pay fees as high as those anticipated. If a portion of the fees can be readily estimated, the FOIA office shall advise the requester accordingly.

(b) In cases in which a requester has been notified that actual or estimated fees are in excess of \$50.00, the request shall be placed on hold and further work will not be completed until the requester commits in writing to pay the actual or estimated fees. Such a commitment must be made by the requester in writing, must indicate a given dollar amount or a willingness to pay all processing fees, and must be received by the FOIA office within 20 working days from the date of the letter providing notification of the fee estimate. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(c) After the FOIA office begins processing a request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the FOIA office will stop processing the request and promptly notify the requester of the higher amount. The request will be placed on hold until the fee issue has been resolved. If the issue is not resolved within 20 working days from the date of the notification letter, NASA will provide the requester, if the requester is a non-commercial use requester, the statutory entitlements of 100 pages of duplication at no charge and shall advise the requester that his statutory entitlements have been provided before closing the request.

17. Amend § 1206.505 by revising paragraph (e) to read as follows:

§ 1206.505 Advance payments.

(e) In cases in which a FOIA office requires advance payment, the request shall not be considered received, and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 20 working days after the date of the FOIA office's letter, the request will be closed without further notification.

18. Amend § 1206.506 by revising paragraphs (d) and (e) to read as follows:

§ 1206.506 Requirements for a waiver or reduction of fees.

(d) In deciding whether the standards of paragraph (c)(1) of this section are satisfied, the Agency must consider the factors described in paragraphs (d)(1) through (3) of this section:

(1) Disclosure of the requested information would shed light on the operations or activities of the Government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. The factor in this paragraph (d)(2) is satisfied when the following criteria are met:

(i) Disclosure of the requested records must be meaningfully informative about Government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(ii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. NASA will presume that a representative of the news media will satisfy the consideration in this paragraph (d)(2)(ii).

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(i) NASA, and its Centers processing requests, must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding the consideration in this paragraph (d)(3)(i).

(ii) If there is an identified commercial interest, NASA must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (d)(1) and (2) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. NASA ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (d)(1) and (2) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees under this section, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to NASA and should address the criteria referenced in paragraph (d) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

(e) FOIA offices may make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees; however, the FOIA staff may not assist a requester in composing a request, advising what specific records to request, or how to write a request to qualify for a fee waiver.

19. Amend § 1206.507 by revising paragraphs (c)(1) through (4) to read as follows:

§ 1206.507 Categories of requesters.

(c)***

(1) Commercial use requesters. When NASA receives a request for documents appearing to be for commercial use, meaning a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests, which can include furthering those interests through litigation, of either the requester or the person on whose behalf the request is made, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. NASA will not consider a commercial-use request for a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. A request from a corporation (not a news media corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category. Commercial use requesters are not entitled to two (2) hours of search time or to 100 pages of duplication of documents without charge.

(2) Education and non-commercial scientific institution requesters. To be eligible for inclusion in the category in this paragraph (c)(2), requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use (not operated for commerce, trade, or profit), but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(i) Educational institution is any school that operates a program of scholarly research. A requester in the fee category in this paragraph (c)(2) must show that the request is made in connection with the requester's role at the educational institution. NASA may seek assurance from the requester that the request is in furtherance of scholarly research and will advise

requesters of their placement in the category in this paragraph (c)(2). A request for educational purposes may be presumed if submitted on the Institution's letterhead and signed by the Dean of the School or Department.

(A) Example 1. A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(B) Example 2. A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(C) Example 3. A student, who makes a request in furtherance of the student's coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of the fee category in this paragraph (c)(2).

(ii) For the purposes of a non-commercial scientific institution, it must be solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Requests must be sent on the letterhead of the scientific institution and signed by the responsible official-in-charge of the project/program associated with the subject of the documents that are being requested.

(3) Representative of the news media. (i) NASA shall provide documents to requesters in the category in this paragraph (c)(3) for the cost of duplication alone, excluding charges for the first 100 pages.

(ii) Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of new media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. These examples are not all inclusive. As methods of news delivery evolve, alternative news media entities may come into existence. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. “Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester’s past publication record in making this determination. Agencies will advise requesters of their placement in the category in this paragraph (c)(3).

(iii) Requesters seeking the fee category in this paragraph (c)(3) who do not articulate sufficient information to support their request will not be included in the fee category in this paragraph (c)(3). Additionally, FOIA staff may grant a reduction of fees if the requester can articulate the information of this section for some of the documents.

(4) All other requesters. NASA shall charge requesters who do not fit into any of the categories mentioned in this section fees in accordance with the fee table in paragraph (b) of this section.

Subpart G – Appeals

§ 1206.700 [Amended]

20. Amend § 1206.700 by:

- a. Removing the number “30” and adding in its place the number “90” in paragraph (a);
- b. Adding “Room 8U71, 300 E Street, SW,” after the second occurrence of the word “Headquarters,” in paragraph (b)(2); and
- c. Removing the number “30” and adding in its place the number “90” in paragraph (b)(6).

Subpart H - Responsibilities

22. Amend § 1206.801 by revising paragraphs (b)(1) and (6) and (c) to read as follows:

§ 1206.801 Chief FOIA Officer.

(b) ***

(1) Developing regulations in consultation with the Office of General Counsel, providing guidelines, procedures, and standards for the Agency’s FOIA program;

(6) Preparing all other reports as required to DOJ, OGIS, and Congress or within the Agency;

(c) The Chief FOIA Officer is responsible for ensuring NASA has appointed FOIA Public Liaisons, who are responsible for and able to assist in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes at each Center or Component.

23. Amend § 1206.804 by revising paragraphs (b) and (c) to read as follows:

§ 1206.804 NASA Centers and Components.

(b) This delegated authority has further been delegated to the FOIA Officers who are designated to work at NASA Centers and supervised by the Director of Public Affairs or Head of the Public Affairs Office for that Center. If a FOIA Officer working at a particular NASA Center vacates the position, the Deputy Associate Administrator for Communications will designate a new FOIA Officer, supervised by the Principal Chief FOIA Officer, to process FOIA requests for that particular Center.

(c) When denying records in whole or in part, the FOIA Officer designated to process records for the Center will consult with the Chief Counsel or the Counsel charged with providing legal advice to that FOIA office before releasing an initial determination under §1206.307.

§ 1206.805 [Amended]

24. Amend § 1206.805 by adding a comma after the second occurrence of the word “General” in paragraph (a).

Cheryl E. Parker,
Federal Register Liaison Officer.

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